Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Amendment of the Commission's Space Station Licensing Rules and Policies	)	**IB Docket No. 02-34**
2000 Biennial Regulatory Review – Streamlining and Other Revisions of Part 25 of the Commission's Rules	)	**IB Docket No. 00-~~245~~ 248**

COMMENTS OF INMARSAT VENTURES PLC

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Inmarsat Ventures plc ("Inmarsat") hereby comments on the Commission's Notice of Proposed Rulemaking[1] in this proceeding. Inmarsat is the owner and operator of a geostationary orbit mobile satellite service ("MSS") system consisting of nine in-orbit spacecraft that that operate across the L-Band and provide service around the world, including within the United States.[2]

Inmarsat's spacecraft are licensed by the United Kingdom. Through the United Kingdom, Inmarsat has coordinated the use of L-Band spectrum between 1525-1559 MHz and 1626.5-1660.5 MHz with the satellite networks of a number of other

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1 Amendment of the Commission's Space Station Licensing Rules and Policies, 2000 Biennial Review, *Notice of Proposed Rulemaking and First Report and Order*, IB Docket Nos. 02-34, 00-245 (rel. Feb. 28, 2002) (the "*Notice*").

2 *See* In the Matter of Comsat Corporation d/b/a Comsat Mobile Communications, et al., *Memorandum Opinion, Order and Authorization*, File No. ITC-97-22, et al. (rel. October 9, 2001) (the "*Inmarsat Authorization*").

Administrations, including the United States. As part of the ITU coordination process, these Administrations have committed to use the L-Band in accordance with an agreement known as the "Mexico City Agreement." Under that Agreement, no satellite system has an exclusive assignment of the L-band, and each operator is subject to an annual reassignment of spectrum based on the projected traffic demands of its system.

Inmarsat has an interest in this proceeding (i) as a current provider of MSS services to and from the United States, (ii) as a non-U.S. licensed operator with whom U.S.-licensed systems are required to coordinate under ITU Article S9 of the Radio Regulations, and (iii) as a potential participant in future Commission processing rounds.

I. INTRODUCTION AND SUMMARY

For three decades, the Commission's successful satellite licensing process, based on the use of processing rounds, has facilitated the development of the U.S. satellite industry. Just over four years ago, the Commission recognized the United States' WTO obligations and modified its policies to allow non-U.S.-licensed satellite systems to participate in these very same processing rounds.[3] Only seven months ago, the Commission reaffirmed its decision in DISCO I to continue licensing satellite systems through processing rounds.[4]

Now, the Commission suddenly proposes a radical change to its satellite licensing processes that will hamstring the Commission's ability to grant requests by non-

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[3] *See* Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Satellites Providing Domestic and International Service in the United States, IB Docket No. 96-111, 12 FCC Rcd 24094, 24173-74 (1997) ("DISCO II"), *recon.* 15 FCC Rcd 7207 (1999) ("DISCO II *First Reconsideration Order*").

[4] *See* Amendment to the Commission's Regulatory Policies Governing Domestic Fixed Satellite Systems and Separate International Satellite Systems, *Order on Reconsideration*, 16 FCC Rcd 15579, 15594-95 (rel. August 16, 2001) ("DISCO I *Reconsideration Order*").

U.S.-licensed satellite systems to serve the U.S. market and that threatens to undercut the United States' ability to honor its WTO commitments. In short, the proposed "first come, first serve" licensing regime could undermine the ability of non-U.S. licensed satellite system to gain market access to the U.S.

"First Come" will facilitate the filing of space station applications by those who have no intention of launching a satellite and who seek to block legitimate operators, including non-U.S. licensed satellite systems with ITU priority. This proposed regime would provide an incentive for many parties to rush to the filing window in order to seek to gain access to a particular orbital location. The net result of this change could be a series of U.S. applicants lining up in the FCC queue to try to obtain licenses for orbital resources for which non-U.S.-licensed operators have ITU priority. No "First Come" licensing procedure, or any licensing procedure, should eliminate the discretionary powers that have enabled the Commission to honor the ITU priority of other Adminstrations and to avoid international coordination problems. Moreover, no licensing procedure may prevent the Commission from fulfilling its market access commitments under the WTO.

In order to maintain the ability to honor ITU priority in its satellite application processing, the Commission should maintain both the current processing round procedures and its fungibility policy.

In order to make the satellite licensing process more efficient, the Commission instead should enforce its current rules, including its licensing milestones, anti-trafficking rules and the requirement that applicants show adequate financial resources at the time of filing.

As a foreign satellite operator using L-band spectrum (i.e. 1525-1559/1626.5-1660.5MHz), Inmarsat also requests that the Commission recognize that licensing rules and policies that may be adopted for other MSS bands (such as 1/N spectrum division, where N is the number of applicants) may not be appropriate for the L-Band, the use of which is governed by the Mexico City Agreement. As the Commission is aware and recognized a recent order, the high demand for spectrum in the L-band and unique international coordination agreement that governs the use of L-band spectrum limits the ability of new MSS operators to use the L-band. These facts must be taken into consideration in any L-band application proceeding, and in any changes to the Commission's application processing rules.

Finally, Inmarsat urges the Commission to reconsider its proposal to require non-U.S. licensed operators to provide additional information to the Commission even if the operator has already coordinated the use of the spectrum resource with which it seeks to provide service. Such a requirement is contrary to the spirit of the Commission's DISCO II policy decision not to relicense non-U.S.-licensed satellite operators who seek U.S. market access, and would be unduly burdensome on those satellite operators.

II. "FIRST COME, FIRST SERVED" WOULD HINDER INTERNATIONAL COORDINATION AND BLOCK U.S. MARKET ACCESS

As the Commission aptly points out, "[t]he success of the U.S. satellite industry is due, at least in part, to the Commission's current satellite licensing process"[5] As a result of the processing round procedures, the U.S. has been able to establish a vibrant, competitive and successful U.S. satellite industry. Just over four years ago, the

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5 *Notice* at ¶ 3.

Commission recognized the United States' WTO obligations and modified its policies to allow non-U.S.-licensed satellite systems to participate in these very same processing round licensing procedures.[6] Only seven months ago, the Commission reaffirmed its decision in DISCO I to continue licensing satellites through processing rounds.[7]

Now, the Commission suddenly proposes a radical change to its satellite licensing processes that will hamstring the Commission's ability to grant requests by non-U.S.-licensed satellite systems to serve the U.S. market, and thereby undercut the U.S.'s ability to honor its WTO commitments. As discussed below, a "First Come" model would result in orbital assignments that may not take into account the ITU priority of other Administrations, would create a congested filing system full of long applicant queues.

A. "First Come" Would Preclude the Commission's Taking Into Account ITU Priority

As the Commission has recognized, in addition to obtaining a license to operate a space station in an orbital location, as a practical matter a U.S. satellite operator either must have the U.S. obtain ITU priority for that location, or must coordinate with non-U.S. operators that have higher ITU priority.[8] Similarly, ITU priority is an extremely valuable right for a non-U.S. licensed operator who seeks to serve the U.S. The U.S. may not be obligated to grant market access to every non-U.S.-licensed operator who seeks to serve the U.S. But the U.S. certainly is obligated not to establish

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6 *See* DISCO II, 12 FCC Rcd 24173-74.

7 *See* DISCO I *Reconsideration Order*, 16 FCC Rcd at 15594-95.

8 *See, e.g.*, Pegasus Development Corporation Application for Authority to Construct, Launch, and operate a Ka-band Satellite System in the Fixed-Satellite Service, *Order and Authorization* at ¶ 24 (rel. August 3, 2001) ("*Pegasus Order*").

roadblocks to market access that favor U.S. licensees. The Commission's "First Come" approach could create an ITU-priority-related problem that could serve as such an impermissible roadblock.

First, whoever happened to file a thousandth of a second prior to the next applicant would be ahead in the queue and in front of all other applicants for that location, regardless of ITU priority. Thus, a non-U.S.-licensed operator with ITU priority in a particular location that is seeking U.S. market access could find that it is well behind in the FCC queue simply because it filed its application minutes after the other applicants. In contrast, under the Commission's current processing round procedures, the Commission must and does take into account the ITU priority of other Administrations in assigning orbital locations.[9] Thus, if a number of parties file in a processing round for a given orbital location, and one of those parties is a licensee of another Administration with ITU priority, the Commission retains the ability to preserve access to that location by the other Administration's licensee. Under the current processing system, this situation is easily resolved through application of the Commission's fungibility policy, which allows it to assign the U.S. applicants to other orbital locations. But the "First Come" approach could result in long coordination disputes that may or may not ever be resolved, and that effectively deny U.S. market access to the other Administration in the meantime.

Under "First Come," a non-U.S.-licensed system who filed behind an applicant for a U.S. license would be faced with the untenable problem of being denied

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9 *See* In the Matter of Pan American Satellite Corp. Application for Modification of Conditional Authority to Construct a Subregional Western Hemisphere Satellite System, *Memorandum Opinion, Order and Authorization*, FCC 86-257 ¶ 33 (rel. May 21, 1986) ("*Pan American Order*").

access to the world's largest market unless it either (i) negotiated some form of sharing arrangement with the U.S. licensee who filed a few minutes ahead of it, or (ii) waited for the U.S. licensee to fail to meet its milestones and orbital location became available again for U.S. service. Requiring negotiation leads to the blocking and gamesmanship problems discussed in the following section. Requiring that the non-U.S. system wait for the U.S. licensee to fail to meet its milestones delays service to the public (and even then does not address the problem that yet another company without ITU priority may be ahead in the FCC queue). And any suggestion that the non-U.S. licensed system file for ITU priority at another orbital location is a hollow right at best if it would mean that the system would lose its existing ITU priority and move to the back of the ITU queue.

In order for the U.S. to meet its WTO commitments, it is critical that the Commission maintain its current policies and grant U.S. market access to a non-U.S. licensed operator at the location where it has ITU priority and to assign an applicant for a U.S. license to another location. Any licensing approach that would preclude the possibility of this result would be inconsistent with the international obligations of the United States.

B. "First Come" Promotes Gamesmanship and Blocking

A "First Come" licensing process also would spark a stampede to the Commission as soon as it was enacted, and every time an orbital location became available for relicensing. Both bona fide applicants and speculators parties will race to file in order to obtain the presumptive benefits of being first in the queue. Regardless of whether they have a developed plan or funding, companies will have an incentive to file as many applications as possible in order to preserve their options. Some parties will have an incentive to file applications simply to block a competitor from launching a

satellite or new service. By filing first, that party can get in the queue before its competitor, and stop or at least significantly delay, the deployment of its rival's system.

In the worst case, the "First Come" system will create a cottage industry for parties who file applications with no intention of actually launching and operating a satellite. These "blockers" will take their place in line with the reasonable expectation that the company behind them will be willing to pay for the blocker to withdraw its application. Without the baseline qualifications, and the administrative discretion and evaluative procedures inherent in the Commission's current processing procedures, "First Come" will result in games, unnecessary delays, pay-offs and other market inefficiencies.

III. FUNGIBILITY IS VITAL TO EFFICIENT ORBITAL ASSIGNMENTS

The Commission should not only reject the "First Come" proposal; it should also maintain its historic policy of treating orbital locations as fungible in processing rounds.[10] This policy is an essential means that allows the Commission to deal with ITU priority issues that arise where a U.S. applicant seeks a license for an orbital location where a non-U.S. licensed system has ITU priority. In such a circumstance, the Commission can avoid coordination problems and fulfill the international obligations of the United States by assigning the orbital location to the non-U.S. system with ITU priority and assigning a comparable location to the U.S. operator.

The Commission has recognized in the past this need to take international coordination into consideration in its satellite licensing decisions. Fungibility allows the Commission to assess a variety of practical operational factors in assigning orbital

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[10] *Notice* at ¶ 79.

locations among applicants, including coordination issues.[11] In fact, the "ability of the Commission to assign and reassign orbital locations is particularly important in the context of international coordination procedures where the Commission must maintain the flexibility over the use of U.S. orbital locations in order to coordinate with the satellite systems of . . . other countries."[12]

Where satellite operators have obtained licenses for orbital locations where the U.S. does not have priority, the Commission has required the operators to coordinate with the foreign administration with ITU priority.[13] In order to accommodate operators, the Commission also has reassigned satellite operators from orbital slots where a foreign satellite system has priority to a slot where the U.S. has ITU priority. For example, in 1998, the Commission reassigned GE American Communications, Inc.'s ("GE's") GE-3 satellite from 67° W.L. to the 81° W.L. orbital location in order to resolve coordination issues with the Simon Bolivar Andean satellite system (the "Andean

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11 *See* In the Matter of Assignment of Orbital Locations to Space Stations in the Domestic Fixed-Satellite Service, *Memorandum and Order*, FCC 83-186 ¶ 4 (rel. August 12, 1983) ("In general, we assign orbital locations to balance the desires of the applications, the actual traffic volumes and distribution requirements of the applications, constraints on satellite locations imposed by space station design limitations, announced plans of other countries for their own satellites, and broad considerations of fair treatment of existing and new domestic satellite operators.").

12 *Pan American Order* at ¶ 33.

13 *See Pegasus Order* at ¶ 24 (Where a non-U.S.-licensed satellite has prior date priority in its ITU filings, "U.S. licensees assigned to these locations are reminded that they take these licenses subject to the outcome of the international coordination process, and that the Commission is not responsible for the success or failure of the required international coordination.").

System") which was assigned to 67° W.L. by the Andean countries.[14] In that instance, the Andean countries had ITU priority over the U.S. If GE had used the 67° W.L. location, it would have been required to coordinate with the Andean System, which would have made use of the location difficult if not impossible. The Commission, recognizing the prior rights of the Andean System, reassigned GE-3 to an orbital location that it could use without such coordination problems. Subsequently, when it became evident that Argentina had ITU priority at the 81° W.L., the Commission once again reassigned the GE-3 satellite to another orbital location.[15]

Similarly, the Commission has noted that the backlog at the ITU often makes it difficult for an applicant to predict, before it applies to the Commission, the state of ITU priority at a desired orbital location. Because of this backlog "it is difficult to determine" whether the orbital location assigned to an applicant will turn out to be clear of, or subject to, significant restrictions.[16] The existence of potential and apparent ITU priority problems is a compelling reason to maintain the fungibility policy. Often, these facts come to light after a processing round closes. If, during the course of a processing round, it turns out that there are ITU priority issues, the fungibility policy allows the Commission to designate the location to the operator with the fewest coordination issues and for an applicant to specify another desired orbital location without losing its place in line.

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14 *See* In the Matter of Assignment of Orbital Locations to Space Stations in the Domestic Fixed-Satellite Service, *Memorandum Opinion and Order* (rel. June 5, 1998).

15 *See* Assignment of Orbital Locations to Space Stations in the Domestic Fixed-Satellite Service, *Memorandum Opinion and Order* (rel. October 5, 1998).

16 *Notice* at ¶ 80.

Use of its fungibility policy in processing rounds allows the Commission to take into consideration important balancing factors such as ITU priority. The Commission should not abandon this policy.

IV. ANTI-TRAFFICKING RULES SHOULD BE MAINTAINED

The Commission has long maintained a policy that prohibits the transfer of "bare" satellite licenses. Coupled with the Commission's general prohibition of "selling" one's place in a processing round, this policy wisely serves to deter abuses, without precluding the sale of a bona fide satellite business. Eliminating the anti-trafficking rule would promote speculative filings and opportunistic blocking applications, particularly if coupled with a "First Come" licensing approach. Parties with no intent to build or launch a satellite may flood the Commission with applications for licenses that they hope to quickly obtain and then "flip" for a profit. Legitimate satellite operators would incur millions in additional costs paid to blockers that will ultimately be passed on to consumers. And in the meantime, service to the public, and market access by non-U.S. companies would be delayed.

V. FINANCIAL QUALIFICATIONS SHOULD BE MAINTAINED

As with the anti-trafficking rules, a baseline financial qualification requirement serves as a means to identify parties who have the wherewithal to implement a satellite system. The simple truth is that launching and operating a satellite system is a very risky, capital-intensive proposition that requires the ability to raise significant amounts of financing in a short period of time. Much like the screening process that a bank uses when it decides to make a loan, a baseline financial qualification requirement

serves as a type of "screen" to separate pure speculators from parties that have the ability to actually implement a proposed system.[17]

An applicant should have to prove that it is capable of obtaining the financing necessary to build and launch a satellite. If it does not meet such a basic criteria, it should not be eligible to receive a license. Many administrations around the world require such a showing. For example, the United Kingdom requires that prior to the UK administration submitting advance publication materials to the ITU, an applicant must provide an "outline business plan showing the intended sources of funding" of the satellite network.[18]

If the Commission believes that its current financial qualification requirement is too restrictive, then it should modify the existing standard, but not eliminate it. The first test of the financial legitimacy of an applicant should be at the time of the application's review, not well after the license is granted and when the first milestone comes due.[19]

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17 *Notice* at ¶ 99.

18 *See Procedures of the United Kingdom Administration in Relation to Satellite Networks* RA 301 at ¶ 4; *see also Id.* at ¶ 3 ("The applicant must establish to the satisfaction of the UK Administration that they have the required technical, financial and legal credentials to construct, launch and operate the proposed satellite system in conformity with the timescales contained within their business plan.").

19 *See Notice* at ¶ 103.

VI. L-BAND LICENSING MUST BE TREATED DISTINCTLY

As the Commission recently recognized in its report and order establishing the rules and policies for use of the lower L-Band,[20] the existence of the Mexico City Agreement greatly constrains the ability of the Commission to open up licensing of the L-band. Among other things, the fact that the five satellite systems that are subject to that Agreement collectively require access to more L-band spectrum than is available makes it difficult, if not impossible, to accommodate, any additional satellite networks in this band.[21] Moreover, under that Agreement, no satellite system has an exclusive assignment of the L-band, and each operator is subject to an annual reassignment of spectrum based on the projected traffic demands of its system. Thus, unlike other MSS bands where it may be possible to divide the spectrum among the applicants on a "1/N" basis, no such solution is feasible under the Mexico City Agreement. Whatever changes the Commission makes in its licensing policies, Inmarsat urges the Commission to take the Mexico City Agreement into account before applying them to the L-band.

VII. ADDITIONAL REPORTING IS BURDENSOME AND CONTRARY TO EXISTING COMMISSION POLICY

The Commission has proposed to modify its rules to require non-U.S.-licensed space stations seeking access to the U.S. to submit all satellite-related technical information that is specified in Part 25, regardless of coordination status.[22] Such a requirement is excessive, unduly burdensome and contrary to the Commission's prior

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20 *See* In the Matter of Establishing Rules and Policies for the use of Spectrum for Mobile Satellite Services in the Upper and Lower L-band, *Report and Order*, IB-Docket No. 96-132 (rel. Feb. 7, 2002) ("*L-band Order*").

21 *See id.* at ¶¶ 8-9.

22 *See Notice* ¶ 131.

determination not to relicense the space stations of other Administrations that already have been coordinated.

In the DISCO II *First Reconsideration Order*, the Commission stated that it would not seek to relicense foreign operators seeking access to the U.S. market.[23] Despite this, the Commission has imposed milestone obligations upon non-U.S.-licensed operators and now seeks to require that such operators provide the same information to the Commission as they would if they sought to become a U.S.-licensed space station in the first place. By imposing these burdens upon non-U.S. satellite foreign operators, the Commission, as a practical matter, is relicensing these operators.

The filing of Section 25.114 information would also impose an unnecessary burden on non-U.S. satellite operators. It is difficult to understand why the Commission needs access to information about the power budgets, dry weights, repeater diagrams, and other detailed information about the construction of satellite systems that seek to serve the U.S. Gathering and filing of extraneous data with the Commission will require the production of additional paperwork and the incurrence of additional professional fees without any clear benefit. Inmarsat respectfully suggests that any information that the Commission requires be obtained through the confidential international coordination process.

VIII. CONCLUSION

For the reasons discussed above, Inmarsat urges the Commission to reject the proposed "First Come" regime and maintain its current processing round procedures. "First Come" would dramatically delay the processing of satellite applications and

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23 *See* DISCO II 12 FCC Rcd at 24174.

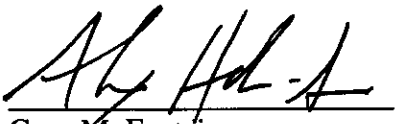
undermine the ability of non-U.S.-licensed satellite systems to have a meaningful chance of market access in the United States. This proposed procedure could lead to absurd results if the Commission no longer had the ability to take into account the ITU priority of other Administrations in making its licensing decisions.

Inmarsat also urges the Commission to maintain its anti-trafficking rules and the requirement that applicants meet minimum financial requirements at the time of filing. These rules help ensure that speculators do not use the application process to greenmail legitimate satellite operators or use the process to block other applicants.

Whatever changes the Commission may make in its licensing policies, Inmarsat urges the Commission to take into account the unique circumstances surrounding the use of the L-band and reflected in the Mexico City Agreement. Finally, Inmarsat urges the Commission not to require non-U.S. licensed satellite systems to file additional information about the characteristics of their coordinated satellite networks unless absolutely necessary.

Respectfully submitted,

INMARSAT VENTURES, PLC



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